Office-Supreme Court, U.S.
FILED
FEB 8 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1961

No. 559

CHOCTAWHATCHEE ELECTRICAL COOPERATIVES, INC., a corporation
Petitioner,

—v.—

RAY E. GREEN, as Comptroller of the State of Florida,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION

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The opinion of the Supreme Court of the State of Florida is reported at 132 So. 2d 556, and in App. B, page 2a of the Petition. The decision of the First District Court of Appeals of Florida, is reported at 123 So. 2d 357, and in App. D, page 10a; and the final decree of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, is set out in App. E, page 14a of the Petition.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Question Presented

Respondent respectfully disagrees with the statement of the question presented as it appears in the Petition. It is submitted that the question here involved is more appropriately stated as follows:

Whether a private Florida corporation is liable for payment of a documentary stamp tax on promissory notes executed by it in Florida, which notes were thereafter delivered to and held by the United States as evidence of a loan.

Constitutional Provision and Statutes Involved

The pertinent provision of the United States Constitution and Florida Statutes involved are set forth in the Petition at pages 2-4.

Statement

Respondent adopts petitioner's statement of the case as it appears in the Petition at page 4.

ARGUMENT

POINT I

Review is not warranted because the decision below is in full accord with the applicable decisions of this Court.

Petitioner relies heavily on *Pittman v. Home Owners' Loan Corporation*, 308 U.S. 21 (1939) and *Federal Land Bank v. Crosland*, 261 U.S. 374 (1923), in asserting a conflict between the decision below and those of this Court. Respondent submits that neither of these cases control the question here involved, for in both instances there was a specific statutory exemption. In *Pittman*,

there was involved Section 4(c) of the Home Owners' Loan Act which provides that the Home Owners' Loan Corporation, its franchise, capital, reserves and surplus, and its loans and income shall be exempt from all state or municipal taxes. In affirming the state court's decision prohibiting the imposition of the state recording tax, this Court held at 303 U.S. 21, at 33:

> "In this instance, Congress has undertaken to safeguard the operations of the Home Owners' Loan Corporation by providing the described immunity. As we said, we construe this provision as *embracing and prohibiting the tax in question.*" (Emphasis supplied)

Petitioner's quote from *Crosland*, supra, appearing at page 8 of Petition, is equally unpersuasive that a conflict exists between the decisions of this Court and that sought to be reviewed, for there too, as in *Pittman*, there was a federal statute, Federal Farm Loan Act of July 17, 1916, Chapter 245, §26, which forbade the tax upon the mortgage there in question.

The most recent case cited by petitioner as being in conflict with the instant case, *Laurens Federal Savings and Loan Association v. South Carolina Tax Commission*, 365 U.S. 157, 5 L. Ed. 2d 749, 81 S. Ct. 719, where this Court held South Carolina's documentary stamp tax on promissory notes executed by the association in favor of a Federal Home Loan Bank to be in violation of §13 of the Federal Home Loan Bank Act of 1932, (12 USC, §1433) is equally not on point. Respondent has searched the provisions of the Rural Electrification Act, 7 USC, §901, et seq. and finds no provision prohibiting the collection of a documentary stamp tax from the maker of the notes here in question. Nor has petitioner called this Court's attention to such a statutory provision.

Efforts of petitioner to further establish a conflict based on the line of cases represented by *U. S. v. Allegheny County*, 322 U.S. 174 (1944) also fall short of their mark. The tax there sought to be imposed was an ad valorem tax whereas here we are concerned with an excise tax.

POINT II

Review is not warranted because the decision below is clearly correct.

Petitioner asserts that the Florida Documentary Stamp Tax is a tax on the document. Indeed, his entire case rests on the proposition that whereas the notes in question are undisputedly United States property, the imposition of the stamp tax on petitioner as maker is tantamount to a tax on the Federal Government.

The Florida Supreme Court characterized the stamp tax as ". . . imposed on the document" in its decision denying certiorari to the District Court of Appeal. However, in rejecting petitioner's contention that the Federal Constitution and decisions preclude the imposition of the tax in this case, the Florida Supreme Court cited *Plymouth Citrus Growers Association v. Lee*, 157 Fla. 893, 27 So. 2d 415, where it held in a case very analagous to the instant case:

> "It is hardly necessary to say that, so long as the Federal Law does not forbid such a tax, the State may exercise the privilege to impose it."

In the *Plymouth* case apparently relied upon by the Court in denying certiorari, the tax here in question was characterized as being ". . . on the citizen's 'promise to pay' which was contained within the promissory note issued to the United States." *Choctawhatchee v. Green*, 132 So. 2d 556,559.

The Florida documentary stamp tax is comparable to the South Carolina documentary stamp act before this Court in *Graniteville Mortgage Company v. Query*, 283 U.S. 376, 75 L. Ed. 1126. It was there held at page 379:

> "The tax as thus sustained is an excise tax, of a familiar sort, levied with respect to the creation of instruments within the state. So laid, *the tax was not imposed upon property*, . . . it is simply a tax levied in relation to an act done within the state in making an instrument." (Emphasis supplied)

The Florida taxing statutes, Section 201.01 and 201.08, and the South Carolina taxing statute before this Court in the *Graniteville case* are alike in every material respect.

It is respectfully submitted that the judgment for the respondent is supportable on the basis of this Court's construction of the taxing statute here involved as pronounced in the *Graniteville* case.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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